County of Los Angeles
CHIEF EXECUTIVE OFFICE
713 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
http://ceo.lacounty.gov

WILLIAM T FUJIOKA
Chief Executive Officer

January 9, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

HEALTH CARE REFORM: LEGISLATION AND BALLOT INITIATIVE

According to Governor Schwarzenegger, the intent of California's proposed health care reform is to make health care more secure, affordable, and cost effective for those with insurance and expand coverage to 3.7 million uninsured individuals. It consists of two parts; **ABX1 1 (Nuñez)**, The California Health Care Security and Cost Reduction Act (Act), which passed the Assembly and is scheduled for a hearing in the Senate Health Committee on January 16, 2008, and the Secure and Affordable Health Care Act of 2008 Initiative, which is targeted for the November 2008 ballot. **This memorandum provides an analysis of each and advises that we will pursue a support and amend position on the legislation consistent with the policies in the State Legislative Agenda, other County positions and this analysis.**

ABX1 1 (NUÑEZ)

The bill includes an individual mandate requiring all individuals to purchase health care coverage with some limited low income exceptions. This could be accomplished in multiple ways through the private market or through an employer, expansion of the Medi-Cal and the Healthy Families programs, creation of a statewide health care purchasing pool (the California Cooperative Health Insurance Purchasing Pool or Cal-CHIPP), and other insurance market reforms.

ABX1 1 increases inpatient and outpatient rates for designated public hospitals, defined as the University of California and county hospitals. Designated public hospitals would continue to receive supplemental Federal reimbursement (Disproportionate Share

Hospital payments) consistent with current law and funds from the existing Safety Net Care Pool pursuant to California's Medicaid Hospital Financing Waiver.

The Managed Risk Medical Insurance Board (MRMIB) is required to define minimum coverage by March 1, 2009. Minimum health coverage is to include the same scope of services as required under the Knox-Keene Act which promotes the delivery and quality of health and medical care to Californians, in addition to prescription drugs. Minimum credible coverage to meet the individual mandate will be determined by MRMIB through the regulatory process. Most of the bill's provisions will take effect on July 1, 2010.

The bill contains a number of requirements affecting counties and public hospitals, the In-Home Supportive Services (IHSS) program, and the County as an employer.

Public Hospital Issues

The following elements of the bill positively affect public hospitals. They ensure that the County has access to sufficient funding and patients to help maintain fiscal stability.

Expands Eligibility: The Act would expand eligibility in the Medi-Cal and Healthy Families programs which has been a longstanding policy goal of the Board. It also will make clinic services available to low income residents who are not eligible for other State subsidized coverage.

Creates a Local Coverage Option (LCO): The County Department of Health Services (DHS) recommended that the State develop an LCO. The legislation allows counties to set up an LCO which will be available to childless adults with incomes up to 100 percent of the Federal Poverty Level (FPL). DHS, the California Association of Public Hospitals (CAPH), the California State Association of Counties (CSAC), and the Service Employees International Union (SEIU) support this provision.

- Guarantees Exclusivity: The childless adults in the LCO remain with public hospitals for four years. In the fifth year, the bill provides for automatic enrollment to the LCO with the ability to disenroll after 30 days. After five years, eligible individuals may choose to enroll in the LCO, a county organized health system or one of the two-plan Medi-Cal managed care contractors in that county. Failure to enroll would result in assignment to the LCO. DHS, CAPH, CSAC, and SEIU support exclusivity.

Increases Reimbursement Rates: Public hospitals will receive cost-based inpatient and outpatient reimbursement rates which will be adjusted annually by the increase in the Consumer Price Index for Medical Services utilizing FY 2009-10 as the base year. DHS, CAPH, CSAC, and SEIU support increased rates.

Fiscal Impact: According to DHS, these public hospital provisions of the legislation, when fully implemented in the third year, will result in an annualized gain of between $190 million to $225 million for the department.

In-Home Supportive Services

ABX1 1 does not designate counties as the IHSS employer of record for IHSS providers and, in addition, specifies that IHSS recipients are not the employer for purposes of any employer fees. Employee representatives may elect, at their sole discretion, to provide health care benefits through a trust fund if requested in collective bargaining. Another provision delegates authority to MRMIB to determine if part-time IHSS providers must be covered under health care reform. In addition, the State would increase its contribution to IHSS provider health care costs.

The County currently provides health care coverage to approximately 29,000 of the estimated 146,000 IHSS providers through the DHS Community Health Plan (CHP). To qualify for coverage under the CHP IHSS Worker Healthcare Plan, IHSS providers must work at least 80 hours per month for two consecutive months.

Potential Fiscal Impact of a Health Trust Fund: Under this provision, if the employee representative chooses a health plan other than the CHP, the County may be required to transfer $15.8 million at a minimum to the Health Trust Fund. This amount represents the County's current share of cost for the IHSS Worker Healthcare Plan. If this transfer occurs, the County will lose an additional $71.4 million in State and Federal revenue it would have received for health benefit coverage to IHSS providers currently in the CHP.

According to DHS, the loss of State and Federal revenue resulting from the potential migration of IHSS providers from the County's CHP would be significantly offset by increased enrollees from the LCO. The amount of County funds subject to transfer could increase substantially depending upon MRMIB's determination of employees to be covered under health care reform.

Increased State Contribution to Health Care Costs for IHSS Providers: The bill provides for a $0.75 increase in State sharing in health benefits. Under existing law, the State shares in benefits up to $0.60 per hour. ABX1 1 would increase the amount to $1.35 over a three-year period. The first $0.25 would occur in the first year that the bill is in effect. The next two $0.25 increments would begin in a subsequent fiscal year in which State General Fund revenues grow at least five percent year over year, based on the May Revision revenue forecast. These increases provide for additional State participation in IHSS provider health benefits at county option.

The County as an Employer

Part Time Employees: MRMIB is authorized to determine the status of part time employees under health care reform through regulation and to define minimum credible coverage for purposes of complying with the Act's requirement that every California resident maintain health coverage. The regulations will be established by MRMIB on or before March 1, 2009. The impact on the County will depend on MRMIB's regulations.

SECURE AND AFFORDABLE HEALTH CARE ACT OF 2008 INITIATIVE

On December 24, 2007, Governor Schwarzenegger and Assembly Speaker Nuñez submitted a ballot initiative to the Attorney General for title and summary. Where ABX1 1 stated legislative intent to fund the implementation of health care reform, the initiative identifies the specific financing elements for the $14.1 billion a year legislative proposal. It includes a tobacco tax of $1.75 per pack, and revenues from employers, hospitals, and counties. The employer mandate would require any employer not providing coverage to pay a tax of between one percent and 6.5 percent based on the size of the payroll, a hospital fee of four percent on net patient revenues, and a county share of cost. The initiative is linked to legislative passage, and the Governor's approval, of a version of ABX1 1 that is essentially the same as the bill which passed the Assembly.

Public Hospital Issues

The initiative contains several significant items which affect public hospitals including a hospital fee, the definition of the County Share of Cost (CSOC), an annual growth factor on the CSOC, provisions to reduce a county's maximum payment amount if the State reduces or eliminates Medi-Cal eligibility, and a process to resolve disputes between the State and counties.

Hospital Fee: A four percent fee is imposed on all participating hospitals. DHS advises that the impact of this fee could result in a fiscal benefit depending on Federal acceptance of the hospital fee as a reimbursable cost.

County Share of Cost: The initiative requires counties to contribute 40 percent of the total costs paid by the State from all sources, for those eligible and enrolled adults with an income at or below 150 percent of the FPL who are residents of a county. The CSOC funds the LCO, and is also the precondition for receipt of enhanced Federal cost-based reimbursement. DHS supports this contribution based on various provisions which protect counties.

- Allocation of CSOC: An allocation for each county will be determined by the Department of Finance in consultation with CSAC. This provision was specifically requested by CSAC.

- Cap on CSOC: The maximum aggregate payment from all counties is set at $1 billion adjusted annually by the percentage change in the Realignment sales tax. From FY 2000-01 through FY 2006-07, the annual change in the Realignment sales tax ranged from -2.7 percent to +8.2 percent. The annual adjustment is applied proportionately to the share of each county's aggregate payment. DHS and CAPH support this provision.

County Protections: The initiative stipulates that a county's maximum payment amount is adjusted if the State reduces or eliminates Medi-Cal eligibility. There is also a process to resolve disputes between the State and counties, and counties may file for fiscal distress if health costs diminish the ability to provide other county services. These protections were specifically advocated by CSAC.

California Hospital Association's Concern with the Initiative: Our Sacramento advocates indicate that the California Hospital Association (CHA) is particularly concerned with initiative language related to the ability of the Legislature to amend provisions of the initiative by statute. CHA is seeking to amend the initiative so that payments to private hospitals at the Federal maximum and the cap on the hospital fee are not subject to amendment. CHA has raised these issues with the Governor's office and is attempting to resolve these concerns.

Pursuit of Position on Health Care Reform

The County supports health reform as outlined below. This position is consistent with a number of policies in its State Legislative Agenda. The County supports a dependable, long term funding source for the health care safety net, and proposals to expand the use of health provider fees and other allowable methods to increase net Federal Medicaid and State Children's Health Insurance Program matching payments to California and health providers at no cost to the State General Fund.

In addition, the County is supportive of proposals that reduce the number of uninsured persons and expand Medi-Cal and Healthy Families coverage to low income individuals. The County supported **SB 840 (Kuehl) of 2005** which would have provided health insurance coverage to all California residents through a single payer insurance program.

The County believes that ABX1 1 and the accompanying initiative represent a significant net fiscal benefit to the County which also will help to maintain the fiscal stability of DHS.

Based on these policies and our analysis, our Sacramento advocates will work to support the passage of ABX1 1. They also will work with our health reform partners including CSAC, the Urban Counties Caucus, CAPH, SEIU, and others in pursuit of this goal. Finally, our Sacramento advocates also will pursue an amendment to the IHSS section of the legislation to exempt counties that provide health care benefits to IHSS providers from the health trust fund provision and take a **support and amend position** on the legislation.

Other Issues

Legislative Analyst's Office (LAO) Evaluation: Senate President pro Tem Perata has asked for an evaluation of the impact of ABX1 1 and the proposed initiative on the State's General Fund by the LAO in light of the State's pessimistic fiscal outlook.

Proposition 1A Protections: These voter approved protections for local governments are not affected by the legislation.

Employee Retirement Income Security Act (ERISA): The Golden Gate Restaurant Association challenged the employer contribution provision of San Francisco's Health Access Plan arguing that it violated ERISA which governs regulation of employee benefits. On December 26, 2007, District Judge Jeffrey White issued a ruling invalidating a portion of San Francisco's plan to extend health care coverage to all uninsured adult residents. The employer mandate was the portion of the plan that was invalidated. Judge White advised that the San Francisco plan was intruding into Federal regulation of employee benefits. It is unclear whether the ruling will be upheld on appeal and if a similar challenge will be mounted against the employer mandate provision of ABX1 1.

On January 3, 2008, the San Francisco City Attorney requested an emergency stay of the ruling from the appellate court in an effort to enforce the employer mandate during the appeals process. On January 9, 2008, the Ninth U.S. Circuit Court of Appeals ruled San Francisco's employer-based health care plan can take effect pending a full review on the merits of the lawsuit filed by San Francisco's restaurant industry. According to today's Sacramento Bee, the court said there was a "strong likelihood" the city would ultimately prevail in its defense of the ordinance.

WTF:GK
MAL:hg

c: All Department Heads
Legislative Strategist
Local 721
Coalition of County Unions
California Contract Cities Association